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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:EO
PLR-142387-11

Date:
February 06, 2012

Entity:

State:

System:

Trust:

Agreement:

New Agreement:

Date 1:

Date 2:

X:

Dear _____ :

This letter responds to a letter from your authorized representative dated August 2, 2011, as well as subsequent correspondence, submitted on behalf of the Entity, requesting a ruling that the Trust's income is excludable from gross income under § 115 of the Internal Revenue Code. The Entity represents the facts as follows.

FACTS

The Entity was formed on Date 1 under the laws of the State and as a political subdivision of the State, with the general authority to exercise the power of eminent domain. It has broad powers to finance, construct, and operate the System, and has full authority to set fees, charges, and rates for service without review by any other governmental unit. The Entity has a staff of approximately x fulltime equivalent employees and is headed by a general manager.

The Entity is obligated by its regulations, employment policies, and/or applicable bargaining agreements to provide post-employment benefits to its employees and their eligible dependents. On Date 2, it created the Trust under the Agreement to pre-fund post-employment benefits other than pension benefits (OPEB or benefits) for its eligible employees and their eligible dependents (qualified beneficiaries). Under the Agreement the Trust was funded solely by contributions from the Entity. Under the New Agreement, eligible employees contribute a portion of their wages to the Trust.

The Entity has complete authority to administer the Trust and invest Trust assets. It may amend the trust agreement at any time and at any time terminate the Trust. The Entity designates a plan administrator for the Trust and has the right to remove the designee at any time, with or without cause, and to appoint a new administrator.

The trustee, selected by the Entity, manages and administers the assets of the Trust, subject to the direction of the plan administrator. The trustee invests Trust assets at his discretion, in accordance with the investment strategy formulated by the Entity. The Entity has the right to remove the trustee at any time, with or without cause.

Trust assets will be used exclusively to provide post-employment benefits to qualified beneficiaries and to defray reasonable Trust administrative expenses. Any Trust assets remaining after the payment of benefits and of reasonable administrative expenses will be paid to the Entity.

LAW AND ANALYSIS

Section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated

that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign properly to conduct. In addition, pursuant to § 6012(a)(2) and the underlying regulations, the investment fund, being classified as a corporation that is subject to taxation under subtitle A of the Code, was required to file a federal income tax return each year.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the income of an organization formed, funded, and operated by political subdivisions to pool various risks arising from their obligations regarding public liability, workers' compensation, or employees' health is excludable from gross income under § 115. In this ruling, private interests did not materially participate in the organization, nor did they benefit more than incidentally from the organization.

The Trust provides OPEB benefits to retired Entity employees and their beneficiaries. Providing such benefits to former public employees constitutes the performance of an essential government function. Based upon Rev. Rul. 90-74 and Rev. Rul. 77-261, the Trust performs an essential governmental function within the meaning of § 115(1).

The funding and provision of retiree OPEB benefits through the Trust satisfies the obligation of the Entity to provide those benefits; thus, the income of the Trust accrues to the Entity, a political subdivision of the State. Any amounts remaining in the Trust after all liabilities of the Trust have been satisfied shall be returned to the Entity. No private interests participate in, or benefit from, the operation of the Trust other than as providers of goods or services. The benefit to retired Entity employees is incidental to the public benefit. See Rev. Rul. 90-74.

RULING

Based solely on the facts and representations submitted by the Entity, we conclude that the income of the Trust is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Consequently, we rule that the Trust's income is excludable from gross income under § 115(1).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no representation is made that contributions or premiums paid on

behalf of, or benefits received by, employees, former employees, retirees, spouses, dependents, or others will be tax-free. This ruling concerns only the federal tax treatment of the Trust's income and may not be cited or relied upon as to any matter relating to the taxation of accident or health contributions or benefits.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to & 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SYLVIA HUNT
Assistant Chief
Exempt Organizations Branch 2
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

enclosures: copy for & 6110 purposes